IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

FAO No.604 of 1992

Date of Decision: 21.2.2007

Oma Rani and others

Appellants

versus

Delhi Transport Corporation and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri Vineet Chaudhary, Advocate for
Shri Arvind Singh, Advocate for the appellants
Shri V.Ramswaroop, Advocate for the respondents

Jasbir Singh, J. (Oral)

This appeal has been filed by the appellants (claimants) to claim compensation, declined to them by the Motor Accident Claims Tribunal, Kurukshetra (in short, the Tribunal), vide award dated 11.2.1992, on account of death of Shri Jai Pal, who died in a motor accident on 1.10.1991. Appellant No.1 is the widow, appellant Nos.2 to 5 are the minor children and appellant No.6 is mother of the deceased.

In their claim application, it was case of the appellants that on 1.10.1991, the deceased Jai Pal, after closing his shop, was going to his village Kishanpura on a cycle. When he was crossing the G.T. road, respondent No.2 came from the Pipli side. He was driving the bus bearing No.DLI-P/9047 in a rash and negligent manner, dashed in the cycle and crushed the deceased under tyres of the bus, who

died at the spot. The driver, alongwith bus, fled away from the spot. By stating that the deceased was of 22 years of age, a barber by profession, earning an amount of Rs.4000/- per month, they put up a claim for compensation.

In reply, ownership of the bus was admitted, however, it was denied that respondent No.2, while driving that vehicle, has caused any accident. It was further stated that the criminal case has been got lodged against respondent No.2 by the appellants in connivance with the local police. The Tribunal, on the basis of pleadings of both the parties, framed the following issues:-

1. *Whether the alleged accident took place due to rash and negligent driving of respondent No.2, if so to what effect? OPP*
2. *Whether Jai Pal son of Ram Parshad died due to accident, if so to what effect? OPP*
3. *Whether the claimants are legal heirs/ dependents of Jai Pal since deceased, if so to what effect? OPP*
4. *Whether the claimants are entitled to any compensation if so to what amount and from whom? OPP"*

Thereafter, the parties led evidence and on analysis thereof, except issue No.3, Tribunal decided all issues against the appellants. Counsel for the appellants has vehemently contended that the finding given by the Tribunal on issue Nos.1 and 2 is not correct. He, by referring to the evidence on record, states that causing of accident, by respondent No.2 and death of Jai Pal therein, was proved on record. To strengthen his argument, he made reference to the statement of Chuni Lal PW2 and also to a copy of the FIR, which was brought on record as Ex.P2. He prays that finding of

the Tribunal, on issue Nos.1 and 2, be reversed and application of the appellants, to claim compensation, be allowed.

As against this, counsel for the respondents has argued that no accident was caused by the bus, in question. Counsel states that as per evidence on record, the offending vehicle was not available at the place of accident when it had occurred. Regarding lodging of FIR against respondent No.2, it was argued that the same is false and was the result of connivance between the claimants and the local police. He prays that the appeal, having no substance, be dismissed.

After perusing evidence on record and hearing counsel for the parties, this Court feels that the Tribunal has erred while dismissing claim application of the appellants. As per post-mortem report, the deceased has received crush injury on his head. So it can safely be said that death had occurred on account of some motor accident. Now, it is to be seen whether there is sufficient evidence to say that the accident was caused by respondent No.2 with the offending vehicle in this case or not. To prove their case, the claimants have produced Shri Chuni Lal as PW2, who has categorically stated that on 27.1.1992, he was present in the hotel of Bhima. He saw the deceased coming from Umri side towards his shop, when a DTC bus came from behind and struck against his cycle. He fell down from the cycle. The driver of the bus ran away from the spot. FIR was got recorded at his instance, copy of which has been brought on record as Ex.P2. In the said FIR, it is specifically mentioned that the bus, which had caused the accident, belongs to Delhi Transport Corporation (DTC). The Tribunal has discarded testimony of this witness by raising some presumptions, which otherwise are not borne out from the record. The above named witness appears to be a semi- literate rural folk, no enmity has been proved on

record with driver of the bus, as such, the witness can be termed as an independent person. May be this witness failed to note down number of the offending vehicle at the time of accident, the said fact alone cannot be made sole basis to say that the accident was not caused by this bus. In the joint written statement filed by respondent Nos.1 and 2, it was a case of total denial. It was not asserted that the bus in question was not at the place of accident where it had occurred. It is an admitted fact that this bus used to ply on the route, which covers the place of accident also and at the relevant time, when accident had occurred, the bus, as per time table, was supposed to be at or near that place. During trial, an attempt was made to show that on account of some mechanical fault, the bus had reached Delhi very late. May be due to the accident, bus might have reached late at Delhi. On the basis of this fact alone, it cannot be presumed that the accident was not caused by the offending vehicle. Furthermore, it is not in dispute that against respondent No.2, criminal case was registered. He made no application to the higher police officers stating that he has wrongly been involved in the above said case. Respondent No.2 has admitted in his statement that the bus, in question, was impounded by the police authorities, after 11 days of the said accident. All these facts clearly show that respondent No.2 had caused accident, in question.

In view of facts noted above, finding given by the Tribunal, on issue Nos.1 and 2 stands set aside and these issues are decided in favour of the claimants.

While dismissing claim of the appellants, the Tribunal has assessed compensation payable to the appellants at Rs.1,92,000/-. However, the relief was declined in view of findings given on issue Nos.1 and 2. So far as claim to get compensation is concerned, counsel for the appellants

states that the deceased had left behind a large family and the Tribunal has committed an error, while deducting 1/3rd amount towards his personal spending. Counsel further says that it is a case where the formula as envisaged by their Lordships of the Hon'ble Supreme Court in *U.P.State Road Transport Corporation and others v. Trilok Chandra and others, 1996 ACJ 831,* was required to be applied.

Prayer for enhancement, has vehemently been opposed by counsel for the respondents.

After hearing counsel for the parties, this Court feels that it is a case where compensation amount assessed by the Tribunal, is required to be increased. It is not in dispute that the deceased had left behind 6 members, 4 out of them, are minor. It is a fit case where unit system, as envisaged by their Lordships of the Hon'ble Supreme Court in judgment, referred to above, can be applied. In view of ratio of the judgment, referred to above, two units can be earmarked for the deceased, two each for other adult family members and one each for the minor children and in this manner, his personal spending will come to Rs.300/- per month. Multiplier of 16 was applied, which in view of age of the deceased, is perfectly justified. After making calculations, now the total amount of compensation would come to Rs.2,30,400/-. It is apparent from the records that the interest was not awarded by the Tribunal. Claimants are held entitled to get compensation amount, along with interest @ 9% (simple) per annum, payable from the date of moving their application to get compensation till realization of the amount. Half of the amount enhanced be paid to appellant No.1 and the remaining half be apportioned amongst all the four children of the deceased and his mother.

With above mentioned modifications, appeal stands disposed of.

Februayr 21, 2007 **(Jasbir Singh)**
gk **Judge**